

Introduced by Senator Runner

(Coauthors: Assembly Members Benoit and Sharon Runner)

February 22, 2005

An act to add Article 8 (commencing with Section 228) to Chapter 1 of Division 1 of the Streets and Highways Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

SB 705, as introduced, Runner. Design-build contracts.

Existing law makes the Department of Transportation responsible for improving and maintaining the state highway system. Under existing law, until January 1, 2010, the department is authorized to utilize design-sequencing as an alternative contracting method for the design and construction of not more than 12 transportation projects, as defined.

This bill would authorize the department to contract using the design-build process, as defined, for the design and construction of transportation projects. The bill would require the director of the department to establish a prequalification and selection process. Because the bill would make it a crime for a person to certify as true any fact on the declaration known by him or her to be false, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares the following:

(a) Various public agencies throughout the country have been considering, and in some cases experimenting with, innovative contracting practices for public works with the goal of improving and reducing the cost of the public works contract process and reducing highway user delays, to the benefit of the public interest.

(b) The Federal Highway Administration has established an experimental project for the purpose of evaluating certain innovative contracting practices, including the use of design-build contracts, and has provided funding for the documentation, evaluation, and reporting of these activities.

SEC. 2. Article 8 (commencing with Section 228) is added to Chapter 1 of Division 1 of the Streets and Highways Code, to read:

Article 8. Design-Build Contracting Program

228. Notwithstanding any provision of the Public Contract Code or any other provision of law, the department may let design-build contracts for the design and construction of transportation projects selected by the director. For the purpose of this article, these projects shall be deemed public works.

228.1. The following definitions apply for purposes of this article:

(a) "Best value" means a value determined by objective criteria and may include, but is not limited to, price, features, functions, life-cycle costs, and other criteria deemed appropriate by the department.

(b) "Design-build" means a procurement process in which both the design and construction of a project are procured from a single entity.

(c) "Design-build entity" means a partnership, corporation, or other legal entity that is able to provide appropriately licensed contracting, architectural, and engineering services as needed.

1 228.2. Prior to contracting for the procurement of state
2 transportation projects, the director shall take all of the following
3 actions:

4 (a) Prepare a program setting forth the scope of the project that
5 may include, but is not limited to, the size, type, and desired
6 design character of the transportation project and site and
7 performance specifications covering the quality of materials,
8 equipment, and workmanship, or any other information deemed
9 necessary to describe adequately the state's needs. The
10 performance specifications shall be prepared by a design
11 professional licensed and registered in the State of California.

12 (b) (1) Establish a competitive prequalification and selection
13 process for design-build entities, including any subcontractors
14 listed at the time of bid, that clearly specifies the prequalification
15 criteria and the manner in which the winning entity will be
16 selected.

17 (2) Prequalification shall be limited to the following criteria:

18 (A) Possession of all required licenses, registration, and
19 credentials in good standing that are required to design and
20 construct the project.

21 (B) Submission of evidence that establishes that the
22 design-build entity members have completed, or demonstrated
23 the capability to complete, projects of similar size, scope, or
24 complexity and that proposed key personnel have sufficient
25 experience and training to competently manage and complete the
26 design and construction of the project.

27 (C) Submission of a proposed project management plan that
28 establishes that the design-build entity has the experience,
29 competence, and capacity needed to effectively complete the
30 project.

31 (D) Submission of evidence that establishes that the
32 design-build entity has the capacity to obtain all required
33 payment and performance bonding, liability insurance, and errors
34 and omissions insurance.

35 (E) Submission of a financial statement that assures the
36 department that the design-build entity has the capacity to
37 complete the project.

38 (F) Provision of a declaration certifying that the design-build
39 entity members have not had a surety company finish work on
40 any project within the last five years.

1 (G) Provision of information and a declaration providing
2 details concerning all of the following:

3 (i) Any settlement or judgment in a construction or design
4 claim or litigation totaling more than five hundred thousand
5 dollars (\$500,000) or 5 percent of the annual value of work
6 performed, whichever is less, against any member of the
7 design-build entity within the last five years.

8 (ii) Any serious violation of the Occupational Safety and
9 Health Act, as provided in Part 1 (commencing with Section
10 6300) of Division 5 of the Labor Code, committed by any
11 member of the design-build entity.

12 (iii) Any violation of federal or state law, including, but not
13 limited to, those laws governing the payment of wages or
14 benefits or personal income tax, Federal Insurance Contributions
15 Act withholding, or state disability insurance withholding or
16 unemployment insurance payment requirements against any
17 member of the design-build entity within the last five years. For
18 the purposes of this clause, only violations committed by a
19 design-build member as an employer shall be included in the
20 declaration. A violation by a subcontractor of the provisions of
21 subdivision (b) of Section 1775 of the Labor Code shall be
22 included in the declaration if the design-build member had
23 knowledge of the violation.

24 (iv) Any violations of the Contractors' State License Law
25 (Chapter 9 (commencing with Section 7000) of Division 3 of the
26 Business and Professions Code), excluding complaints the
27 registrar found unsubstantiated.

28 (v) Any conviction of any member of the design-build entity
29 for submitting a false or fraudulent claim to a public agency over
30 the last five years.

31 (H) Submission of the questionnaire required by Section
32 10162 of the Public Contract Code under penalty of perjury.

33 (I) Provision of a declaration that the design-build entity will
34 comply with all other provisions of law applicable to the project,
35 including, but not limited to, the requirements of Chapter 1
36 (commencing with Section 1720) of Part 7 of Division 2 of the
37 Labor Code.

38 (3) Any declaration required under paragraph (2) shall state
39 that reasonable diligence has been used in its preparation and that
40 it is true and complete to the best of the signer's knowledge. A

1 person who certifies as true any material matter that he or she
2 knows to be false is guilty of a misdemeanor and shall be
3 punished by not more than one year in a county jail, by a fine of
4 not more than five thousand dollars (\$5,000), or by both the fine
5 and imprisonment.

6 228.3. (a) The department, in each design-build request for
7 proposal, may identify types of subcontractors by subcontractor
8 license classification, that will be listed by the design-build entity
9 at the time of the bid. In selecting the subcontractors that will be
10 listed by the design-build entity, the department shall limit the
11 identification to only those license classifications deemed
12 essential for proper completion of the project. The department
13 shall not specify more than five licensed subcontractor
14 classifications.

15 (b) At its discretion, the design-build entity may list an
16 additional two subcontractors, identified by subcontractor license
17 classification, that will perform design or construction work, or
18 both, on the project. The design-build entity shall not list at the
19 time of bid, a total of more than seven subcontractor license
20 classifications on a project.

21 (c) All subcontractors that are listed at the time of bid shall be
22 afforded all of the protection contained in Chapter 4
23 (commencing with Section 4100) of Part 1 of Division 2 of the
24 Public Contract Code.

25 228.4. (a) All subcontracts that are not to be performed by the
26 design-build entity shall be competitively bid and awarded by the
27 design-build entity, in accordance with the design-build process
28 set forth by the department in the design-build package.

29 (b) The design-build entity shall do all of the following in
30 bidding and awarding the subcontractors:

31 (1) Provide public notice of the availability of work to be
32 subcontracted in accordance with Section 10140 of the Public
33 Contract Code.

34 (2) Provide a fixed date and time at which the subcontracted
35 work will be awarded in accordance with Section 10141 of the
36 Public Contract Code.

37 (3) As authorized by the department, establish reasonable
38 prequalification criteria and standards, limited in scope to those
39 described in Section 228.2.

1 (4) Provide that the subcontracted work shall be awarded to
2 the lowest responsible bidder.

3 228.5. The department shall establish technical criteria and
4 methodology, including price, to evaluate proposals and shall
5 describe the criteria and methodology in the request for
6 design-build proposals. The award shall be made to the
7 design-build entity whose proposal is judged as providing the
8 best value in meeting the interest of the department and meeting
9 the objectives of the project.

10 228.6. (a) Any design-build entity that is selected to design
11 and build a project pursuant to this section shall possess or obtain
12 sufficient bonding as required by applicable provisions of the
13 Public Contract Code or the California Toll Bridge Authority Act
14 (Chapter 1 (commencing with Section 30000) of Division 17).
15 Nothing in this section shall prohibit a general or engineering
16 contractor from being designated the lead entity on a
17 design-build entity for the purposes of purchasing necessary
18 bonding to cover the activities of the design-build entity.

19 (b) Any payment or performance bond written for the
20 purposes of this section shall use a bond form developed by the
21 Department of General Services. In developing the bond form,
22 the department shall consult with the surety industry to achieve a
23 bond form that is consistent with surety industry standards, while
24 protecting the interests of the state.

25 SEC. 3. No reimbursement is required by this act pursuant to
26 Section 6 of Article XIII B of the California Constitution because
27 the only costs that may be incurred by a local agency or school
28 district will be incurred because this act creates a new crime or
29 infraction, eliminates a crime or infraction, or changes the
30 penalty for a crime or infraction, within the meaning of Section
31 17556 of the Government Code, or changes the definition of a
32 crime within the meaning of Section 6 of Article XIII B of the
33 California Constitution.